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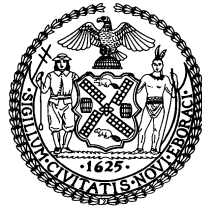
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THE COUNCIL OF THE CITY OF NEW YORK

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November 21, 2022

Oversight - School Bus Transportation Services

INTRODUCTION

On November 21, 2022, the Committee on Oversight & Investigations, chaired by Council Member Gale Brewer, jointly with the Committee on Education, chaired by Council Member Rita Joseph, will hold an oversight hearing to examine school bus transportation services. The Committee expects to hear testimony from the New York City Department of Education (“DOE”) and other interested stakeholders.

I. BACKGROUND

i. Overview of School Busing in New York City

On a typical weekday, DOE’s Office of Pupil Transportation (“OPT”) moves approximately 150,000 students from home to school, then back again, along more than 9,000 OPT-designed bus routes¹ by utilizing approximately 52 bus companies² (which collectively employ approximately 17,500 employees),³ almost all of which are private for-profit companies with multi-year contracts.⁴ The Fiscal Year 2023 DOE budget for pupil transportation was over \$1.6 billion.⁵

OPT offers four services for students to get to and from school: 1) General Education yellow bus transportation; 2) Specialized yellow bus transportation; 3) full- and half-fare student MetroCards for use on public transportation; and 4) Pre-K and Early Intervention yellow bus

¹ OPT Executive Director Glenn Risbrook testimony, New York City Council Education Committee hearing September 21, 2022, *available at*

<https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=996907&GUID=BD62BD8E-CC1B-4D58-9DE6-19F948FB45CD&Options=info/&Search=#> (hereinafter, “OPT September 2022 testimony”).

² *Id.* However, on its website, DOE lists 41 companies under the heading “[Bus Companies for School Age Children \(nyc.gov\)](https://www.doe.nyc.gov/bus-companies)” (accessed on November 16, 2022).

³ Office of the New York State Comptroller, Report 2019-S-41, “Oversight of Pupil Transportation by the State Education Department,” at 14, *available at* <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2021-19s49.pdf> (accessed November 16, 2022).

⁴ One company, New York City School Bus Umbrella Services (“NYCSBUS, pronounced “nice bus”), is a City-controlled non-profit and is discussed *infra* in Section III.

⁵ City of New York Adopted Budget FY 2023, 74, *available at* <https://www.nyc.gov/assets/omb/downloads/pdf/erc6-22.pdf>

transportation.⁶ Schools apply to DOE to receive yellow bus service for field trips⁷ or for classes after 4pm,⁸ but OPT does not provide bus service for after-school programs.

OPT’s website describes eligibility for transportation services as prescribed by Chancellor’s Regulation A-801.⁹ Based on grade level and distance between residence and school, general education students may receive full- or half-fare MetroCard or stop-to-school yellow bus transportation. In order for a student to receive yellow bus service, each of the following criteria must be met: 1) the student must be eligible for full fare transportation; 2) the student must be in grades K-6; 3) the student's residence must be in the same district as the school (if attending a public school) or the same borough (if attending a charter or non-public school); 4) the student's school must have yellow bus service available for all eligible students; and 5) a bus stop within the student’s grade/distance eligibility exists or can be added to accommodate the student.¹⁰

Specialized yellow bus transportation is curb-to-school busing for students receiving special education services who are mandated to receive specialized transportation on their most recent Individualized Education Program (IEP).¹¹

Pre-K and Early Intervention yellow bus transportation is for children under the age of five enrolled in special education Pre-K or Early Intervention programs, who are eligible for curb-to-school yellow bus service as indicated by an IEP or Individualized Family Service Plan (IFSP).¹²

⁶ OPT website, “[Transportation Overview \(nyc.gov\)](#)” (accessed November 16, 2022).

⁷ Chancellor’s Regulation A-670, available at < [a-670-english \(nyc.gov\)](#) >.

⁸ [4PM And After Information Letter \(nyced.org\)](#)

⁹ OPT website, “[Transportation Eligibility \(nyc.gov\)](#)” (accessed November 16, 2022).

¹⁰ *Id.*

¹¹ *Id.* (“Curb-to-school or specialized transportation is when a bus picks up a student from the curb nearest their home and drops them off at their school. Only students who have transportation recommended on their Individualized Education Program IEP or 504 Accommodation Plan (504), or have an approved medical exception from the Office of Pupil Transportation, are eligible for curb-to-school transportation. Questions about receiving specialized transportation should be directed to the IEP or 504 team at the student's school.”); *see also* [Transportation Rights \(nyc.gov\)](#) (accessed November 16, 2022).

¹² [Transportation Eligibility \(nyc.gov\)](#) (accessed November 16, 2022).

OPT is responsible for determining the mode of transportation, yellow school bus (contract carrier) or public transit bus or subway (common carrier), to be provided to each student.¹³ OPT also provides extensive information for parents on its webpages, including links to applicable regulations and information regarding school bus safety and eligibility for transportation services.¹⁴ There is also a “Transportation Search Page,”¹⁵ where parents can find out details about their child's assigned bus stop or route, as well as a link to a site to check whether today’s bus has been delayed due to traffic congestion, mechanical failure, or other problems.¹⁶ Parents can also call OPT’s Customer Service Hotline for further information between 5:00 a.m. and 7:00 p.m.¹⁷

ii. Legal Background Regarding Student Transportation

State Education Law does not require city school districts to provide transportation for students residing in the district, but if transportation is provided, it must be “offered equally to all such children in like circumstances.”¹⁸ State Education Law does require districts to provide suitable transportation for special education children to and from the school they legally attend. Suitable transportation must be provided for students with disabilities attending non-public schools up to a distance of fifty miles, if the services received there were recommended for the student by the local Committee on Special Education. Chancellor’s Regulation A-801 sets forth pupil transportation policies, procedures, and eligibility requirements for both contract carrier (yellow bus) and

¹³ DOE, Chancellor’s Regulation A-801 §1.1, 9/5/00, *available at* <[A-801 9-5-2000 Final combined remediated WCAG2.0 \(nyc.gov\)](#)>(accessed November 16, 2022).

¹⁴ OPT website, “[Transportation Overview \(nyc.gov\)](#),” (accessed November 16, 2022); *see also* [Transportation Rights \(nyc.gov\)](#) (accessed November 16, 2022).

¹⁵ OPT website, “Basic Student Transportation Search,” <<https://www.opt-osfns.org/opt/Resources/SchoolRouteStSearch/SearchResult.aspx?display=StudentOnly>> (accessed without login November 16, 2022).

¹⁶ OPT website, “School Bus Delay For [Today’s Date],” <http://www.opt-osfns.org/opt/vendors/busbreakdowns/public/default.aspx?search=YES> (accessed November 16, 2022).

¹⁷ *Id.* (“For complete information call the Customer Service Hotline at (718) 392-8855 between 5:00 am and 7:00 pm”).

¹⁸ Education Law § 3635(1)(a).

common carrier (public transit bus or subway). OPT has a process for evaluating appeals concerning student eligibility.¹⁹ When contract school bus service is provided, no bus route shall exceed a total one-way route length of five miles through all stop points.²⁰ Further, no contract bus route shall operate across borough or county lines and no contract bus route will be established to serve fewer than 11 students.²¹

The New York City Administrative Code also contains requirements pertaining to school bus service. Safety measures required on buses transporting students with disabilities include seat belts; an escort in addition to the driver; dual opening doors; and air conditioning.²² The Administrative Code also requires DOE to prepare and, when necessary, to revise, two school bus service plans annually (one for the regular school year and one for summer school) “to ensure that all students eligible to receive school bus service to and from the schools they legally attend shall be provided with a seat on a school bus.”²³ The completed plans, and any revised plans, must be submitted to the Mayor and the Speaker of the City Council. DOE is also required to prepare and provide to each bus company lists of students eligible to ride on the company’s school buses. A separate list must be compiled by DOE for each school bus route and bus companies are required to provide bus drivers the appropriate list for each school bus route. Pursuant to the law, the principal of each school is required to assign personnel to monitor students exiting and boarding school buses, and such personnel must be provided with the same lists provided to bus drivers. Students who are not on the list are not allowed to board the school bus, except “where such students waiting to board such school bus are not accompanied by an adult, the bus driver shall

¹⁹ DOE, Chancellor’s Regulation A-801 § 3.3.

²⁰ DOE, Chancellor’s Regulation A-801 § 4.1.

²¹ DOE, Chancellor’s Regulation A-801 § 4.2.

²² New York City Admin. Code § 19-601 et seq.

²³ New York City Admin. Code § 19-606(b).

allow such students to board such school bus” or “unless authorized to do so by personnel assigned by the principal.”²⁴ In addition, during the first ten days of the session, a student may be allowed to board the school bus, “whether or not such student is listed as eligible to receive school bus service on that school bus route.”²⁵

iii. History of School Bus Contracts and Their Employees’ Protections

As noted above, DOE contracts with school bus vendors to provide pupil transportation services; it does not own school buses or employ bus drivers directly. The Fiscal 2023 contract budget for transportation of pupils was over \$1.5 billion.²⁶ Many school bus transportation contracts date back to 1979.

In December 2017, DOE issued a request for bids (RFB) for school bus services on 1,600 routes to replace existing contracts that expired in June 2018. However, the RFB included employee protections, and a coalition of school bus companies sued DOE to block these protections from being included, prevailing in 2019.²⁷ Legislation to overturn this ruling passed the Legislature but was vetoed by then-Governor Cuomo.²⁸

The employee protections included in the recent RFB had historically been included in all school bus contracts, but were not included in the contracts the RFB intended to replace. In 2012 and 2013, under then-Mayor Michael Bloomberg and then-Chancellor Dennis Walcott, the City

²⁴ New York City Admin. Code § 19-606(d).

²⁵ New York City Admin. Code § 19-606(f).

²⁶ City of New York Adopted Budget FY 2023, 74, available at <<https://www.nyc.gov/assets/omb/downloads/pdf/erc6-22.pdf>>

²⁷ See generally *L&M Bus Corp. v. New York City Dept. of Educ.*, 2018 NY Slip Op 31204(U), N.Y. Sup. Ct., New York County (June 14, 2018), available at <[L&M Bus Corp. v New York City Dept. of Educ. \(nycourts.gov\)](https://www.nycourts.gov)>. The Appellate Division upheld the core ruling, see 2018 NY Slip Op 08366, 167 A.D.3d 454, N.Y. App. Div. 1st Dept (December 6, 2018) available at <[Matter of L&M Bus Corp. v New York City Dept. of Educ. \(2018 NY Slip Op 08366\) \(nycourts.gov\)](https://www.nycourts.gov)>. The Court of Appeals denied leave to appeal, see 2019 NY Slip Op 66823, N.Y. (April 2, 2019), available at <[Matter of L&M Bus Corp. v N. Y. City Dept. of Educ. \(nycourts.gov\)](https://www.nycourts.gov)>.

²⁸ Governor Andrew Cuomo, Veto Message - No. 285 of 2019.

rebid approximately 40 percent of school bus contracts and removed the employee protection provisions (“EPP”). The EPP required school bus vendors to prioritize hiring individuals who became unemployed because their employer lost DOE bus contract work and to pay these employees the same wages and benefits they received before becoming unemployed. Removing the EPP lowered the projected cost of those contracts by \$400 million.

Though bus drivers are employed by bus vendors, the City took an active role in ensuring adequate wages and benefits for these employees.²⁹ In order to extend the wage protections formerly offered by the EPP, Local Law 44 of 2014 authorized the Department of Small Business Services (“SBS”) to establish a voluntary grant program to supplement the wages of school bus employees who lost their employee protection provisions through the newly awarded bus contracts. Though the Local Law expired on December 31, 2015, SBS continued the School Bus Grant Program.³⁰ Total spending on the NYC School Bus Grant Program from Fiscal 2014-2019 was approximately \$224 million.³¹ This funding supported employment of approximately 1,200 employees of only one vendor, Reliant Transportation, now defunct.³²

iv. Chronic Problems in OPT before 2018

DOE’s school bus services, and the operations of OPT, have a history of scandals and mismanagement,³³ and the start of the 2018-19 school year was no exception. *The Daily News* reported that in September 2018, the New York City school bus helpline received 129,827

²⁹ Report of the Human Services Division, filed by the Committee on Education, New York City Council (October 16, 2018), available at <<https://legistar.council.nyc.gov/View.ashx?M=F&ID=6682087&GUID=8232243C-42E6-4B1F-A0CE-AE6AD23136D3>>

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*, citing Beth Fertig, “Why New York City School Busing is So Expensive,” *WNYC*, (January 22, 2013), available at <<https://www.wnyc.org/story/284319-why-new-york-city-school-busing-is-so-expensive/>>.

complaints, an increase from the already high number of 109,548 complaints during the same period in the prior school year,³⁴ many of which involved no-show school buses or significant delays.³⁵

v. 2018 Council Hearing and Reforms

In response to these complaints and other issues, in September 2018, then-Chancellor Richard Carranza replaced the head of DOE’s Office of School Support Services (OSSS), which oversaw School Food and the Public Schools Athletic League, in addition to OPT.³⁶ OPT was then removed from DOE’s OSSS, so that the head of OPT would report the Chancellor through a Senior Advisor for Transportation.³⁷ OPT also created and filled the new position of Routing Manager,³⁸ supervising a router in each borough and an assistant—for 11 employees working exclusively on routing, out of 25 employees with some responsibility for routing.³⁹

The Committee on Education held an oversight hearing on October 16, 2018, focused on OPT,⁴⁰ at which the Committee also heard several bills aimed at improving school busing, titled

³⁴ *Id.*, citing Ben Chapman and Graham Rayman, “City Council committee to hold hearing on school bus fiasco following Daily News series,” *New York Daily News*, (October 4, 2018), available at <http://www.nydailynews.com/new-york/ny-metro-council-hearing-school-bus-scandal-20181003-story.html>.

³⁵ *Id.*, citing Ben Chapman, “This boy's school bus didn't come for two days; when it did, the ride lasted 4 hours and his ordeal was one of thousands during schools' opening days,” *New York Daily News*, (September 8, 2018), available at <http://www.nydailynews.com/new-york/education/ny-metro-city-school-bus-nightmare-20180907-story.html>.

³⁶ Beenish Ahmed, “Chancellor Says He's Aggressively Taking on School Bus Issues,” *WNYC News*, (September 25, 2018), available at <https://www.wnyc.org/story/schools-chancellor-says-hes-aggressively-taking-school-bus-issues/>.

³⁷ Testimony of NYC DOE Chancellor Richard Carranza before the New York City Council Education Committee on October 16, 2018, at 30, 42, available at <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6785063&GUID=78BA7441-C230-4DFA-BFB9-DDFE5B5A2D22>.

³⁸ *Id.*, at 42.

³⁹ Testimony of Senior Advisor to the Chancellor on Transportation Kevin Moran before the New York City Council Education Committee on October 16, 2018, at 72-73, available at <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6785063&GUID=78BA7441-C230-4DFA-BFB9-DDFE5B5A2D22>.

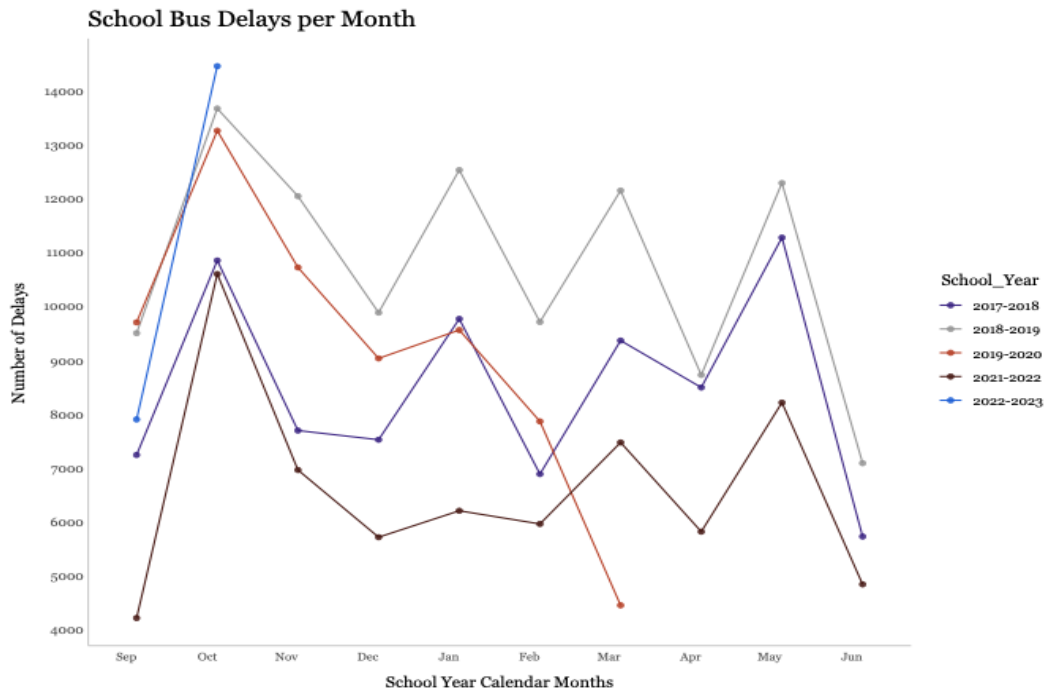
⁴⁰ See generally New York City Council Education Committee Hearing, “Oversight - DOE’s Office of Pupil Transportation,” (October 16, 2018), available at [The New York City Council - File #: T2018-2980 \(nyc.gov\)](https://www.nyc.gov/html/legistar/council/education/committees/hearings/2018/10/16/oversight-doe-office-pupil-transportation).

the Student Transportation Oversight Package (“STOP”).⁴¹ This package passed the Council on January 9, 2019. Since the Council passed the STOP package, OPT is required to report, semi-annually, numerous data on student transportation.⁴²

II. PROBLEMS PERSIST

i. Continuing Bus Delays

October 2022 saw the highest number of delays of any single month in the last five years, surpassing 14,000.



⁴¹ New York City Council Press Release “[Speaker Corey Johnson, Education Committee Chair Mark Treyger and Council Members Announce Student Transportation Oversight Package - Press \(nyc.gov\)](#)” (October 16, 2018). The Committee heard Proposed Introduction Number 89-A (“Prop. Int. 89-A”), sponsored by Council Member Andy King; Introduction Number 451 (“Int. 451”), sponsored by Council Member Daniel Dromm; Introduction Number 926 (“Int. 926”), sponsored by the Speaker, Council Member Corey Johnson; Introduction Number 929 (“Int. 929”), sponsored by Council Member Joseph Borelli; Introduction Number 1099 (“Int. 1099”) and Preconsidered Introduction Number T2018-3003 (“Precons. Int. T2018-3003”), sponsored by Council Member Ben Kallos; Preconsidered Introduction Number T2018-2962 (“Precons. Int. T2018-2962”), sponsored by Council Member Mark Treyger; and Resolution Number 540 (“Res. 540”), sponsored by the Public Advocate, Letitia James, which all relate to school bus services.

⁴² DOE website, “Student Transportation Reports,” available at <<https://infohub.nyced.org/reports/government-reports/office-of-pupil-transportation-bi-annual-reports>> (accessed November 16, 2022).

Delays themselves seem to be worsening, or at least not improving. If a bus was delayed in October 2022, it was on average delayed by 41.45 minutes—slightly worse than September 2022, when delays were on average 37.57 minutes long.

The start of this school year featured both more delays and longer delays than last year: with 22,347 delays, lasting 40 minutes on average, in September and October 2022; September and October 2021 saw 14,783 delays, lasting 36 minutes on average.

Complaints remain stubbornly high as well, though not at their peak. OPT’s hotline received 17,748 complaints at the beginning of the 2022-23 school year, with 3,350 of those on the first day.⁴³ Education advocates have also indicated that many families experience long wait times when calling the hotline.

ii. Safety Issues on Bus Rides

Issues in student busing go beyond delays and no-shows—the safety and quality of bus rides have also drawn scrutiny. In July 2019, the director of a Queens nonprofit working in a summer program for students with disabilities complained repeatedly that buses transporting students to school were arriving with broken air conditioning, discharging overheated students who risked medical complications.⁴⁴ This complaint prompted an investigation by the Special Commissioner for Investigation of the New York City School District (SCI), who found that despite complaints from the director and others, no violations were issued⁴⁵ to the bus company

⁴³ OPT September 2022 testimony.

⁴⁴ Special Commissioner of Investigation for the New York City School District “Report regarding the Transportation of Students with Special Needs Aboard Dangerously Hot School Buses,” (December 4, 2019), at 4, available at < <https://nycsci.org/wp-content/uploads/2018/Reports/12-19-Hot-School-Buses-Report.pdf> >.

⁴⁵ *Id.*, at 8.

responsible, Island Charter.⁴⁶ More broadly, SCI found that technological and procedural defects within OPT meant that complaints seriously outnumbered violations—and indeed, that it was impossible to even determine whether a given complaint led to a financial penalty for the bus company.

Safe driving is also an issue. According to a *Daily News* article from October 2021 based on DOE data disclosed under the Freedom of Information Law, “since January 2014, city school buses have piled up a combined 26,339 speed camera or red light tickets. A majority of those violations — 14,370 — have been recorded since 2019, the year state lawmakers approved legislation allowing the city to install hundreds of new red light and speed cameras in school zones.”⁴⁷ In the context of approximately 9,000 bus routes on a typical school day, those data are less alarming, but they certainly do not reflect a dynamic in which OPT is using its contractual authority to push the bus companies to continuously improve their safety records over time.

iii. Reimbursement and Rideshare Programs May Be Available When Busing Is Not, But Only for Students Eligible for Curb-to-School Transportation

According to its website, DOE offers reimbursement—only for students eligible for curb-to-school transportation—when a bus route is not available, or in instances when DOE can verify that a bus was substantially delayed, never arrived, or refused to provide service.⁴⁸ In such cases,

⁴⁶On its website, OPT currently lists as a contractor “IC Bus, Inc.,” which has the same corporate address as the seemingly still-active corporation Island Charter. See [Bus Companies for School Age Children \(nyc.gov\)](#) and [Island Charter - The BEST Charter Bus Rental Company in Staten Island, NY](#), respectively.

⁴⁷L. Quigley, M. Elsen-Rooney, & C. Guse, “Two-Thirds of NYC School Buses Have Speeding, Red Light Camera Tickets – Including Thousands Issued in School Zones,” N.Y. DAILY NEWS (October 11, 2021), available at [<NYC school buses get traffic tickets at alarming rate \(nydailynews.com\)>](#)

⁴⁸ DOE website <https://infohub.nyced.org/in-our-schools/operations/transportation-resources-for-schools> “Transportation Reimbursement for Students Eligible for Curb-to-School Transportation” (accessed November 16, 2022).

a student’s family must complete an online Transportation Reimbursement Form and attach a digital receipt. The volume of reimbursement forms that DOE receives or the percentage thereof that it accepts, issuing reimbursement, is not clear.

In the section of DOE’s website entitled “What’s New In Student Transportation This Year,” DOE announces that “[s]tudents who are eligible to receive curbside-to-school busing for the 2022-23 school year may be eligible for pre-paid rideshare options if their route is out of service. Families will have a choice between rideshare companies. To learn more about rideshare options and eligibility please reach out to your school for assistance.” While DOE has not published those details on its website, DOE’s implementation of a rideshare option for the DOE K-8 summer program Summer Rising during the summer of 2022 allowed any adult authorized to pick up a student to use one of two rideshare services to ride to school for pickup, then home with their student. The program allowed a choice between two rideshare companies: (1) Uber, Inc., which utilized a daily, two-ride voucher added by DOE to a user’s account in the Uber app or (2) the Drivers Cooperative, which used a website for booking and had a DOE-specific page, where caregivers could enter their child's DOE provided New York City Schools Account uses a website for booking, had a DOE-specific page, where caregivers could enter their student’s code, provided by DOE via the New York City Schools account (NYCSA, pronounced “nicksa”).⁴⁹

iv. Increasing Need from Students in Temporary Housing, Including Asylum Seekers

Among those students with unassigned routes are students in temporary housing. According to a data snapshot as of June 2022 (reported to the Council by DOE in July 2022), 354 students in

⁴⁹ New York City Department of Education “Summer Rising Transportation Rideshare Overview” slide deck (June 30, 2022)(on file with Council).

Department of Homeless Services (DHS) shelters who were eligible for busing were still waiting to be routed, a full 5 percent of all 6,576 students who were both living in DHS shelters and eligible for busing.⁵⁰ In that snapshot report, “[a] student was recorded as routed if they were routed at any point during the reporting period,” January to June 2022, meaning that those 354 students almost certainly do not include all students who were at some point during that time waiting to be assigned a bus route. For any of the waiting students, the 354 or any who may be uncounted in the snapshot, it is not clear how long such waits tend to be.⁵¹ The number of students in DHS shelters waiting to be routed in June 2022 more than doubled from the June 2021 snapshot,⁵² but that was *before* the City saw an influx of asylum seekers in the late summer and early fall: an estimated additional 5,850 children have been enrolled in school..⁵³

It must be noted that students in DHS shelters are only a fraction of students in temporary housing, a much broader category that includes families doubled up with relatives or friends and in other situations. Education advocates have indicated that the only way for students in temporary housing other than DHS shelters as well as students in foster care to get busing is to apply for it

⁵⁰ Data & Reporting, Office of Pupil Transportation, NYC DOE, “City Council Unit of Appropriation 438: School Transportation for Homeless Students Summary Report Reporting Period: January 2022-June 2022,” (June 28, 2022)(on file with Council) (“Students are considered eligible for busing if they meet one of the following criteria: 1. The student is in grade K-6, lives 0.5 miles or more from the school and has a parent transportation preference for busing or transportation preference is unknown. 2. The student is in grades 7-8, has an IEP (without a mandate for busing), lives more than 0.5 miles from the school and has a parent transportation preference for busing or transportation preference is unknown 3. The student has an IEP mandate for busing, regardless of parent transportation preference”).

⁵¹ In a December 2018 report to the Council, DOE stated: “that student shelter, school, and other information change daily. As such, routing for students in shelters is an ongoing daily activity and there are always students ‘waiting to be routed.’ Students are typically routed within a week of *complete* information being received at DOE’s Office of Pupil Transportation.” (emphasis added), *available at*: <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/01/Department-of-Education-Busing-of-Students-in-Temporary-Housing-1-of-2.pdf>

⁵² The same number was 154 in 2021. [Department-of-Education---Busing-of-Students-in-Temporary-Housing-1-of-2.pdf](https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/01/Department-of-Education---Busing-of-Students-in-Temporary-Housing-1-of-2.pdf) (nyc.gov) . The June 2022 number of 354 unrouted students is historically high but not unprecedented.

⁵³New York City Independent Budget Office, “Impact of Newly Arrived Asylum Seekers on New York City’s Budget,” (November 13, 2022), at 4, *available at* < [ibo-asylum-seeker-letter-and-memo-november2022.pdf](https://www.nyc.gov/ibobudget/impact-of-newly-arrived-asylum-seekers-on-new-york-city-s-budget) (nyc.ny.us)>.

through an exception request.⁵⁴

v. Driver Shortage

In late September 2022, OPT testified at an Education Committee hearing that 3 percent of OPT-designed bus routes did not have a dedicated driver (approximately 270 routes).⁵⁵ By late September, 400 drivers were in the process of on-boarding with the bus companies, and OPT testified that some problems ascribed to the driver shortage would “dissipate” as those 400 drivers began work, without giving a timeline for when that would be. OPT testified that their staff worked to develop recruitment and retention strategies for its bus contractors, including rehiring previously retired bus drivers. One company, a City-controlled nonprofit discussed in the next section, is advertising a \$5,000 signing bonus for drivers on its website.⁵⁶

III. OPT’S TOOLS

i. Liquidated Damages

Current contracts include a schedule of liquidated damages (contractual penalties that operate like fines) ranging from \$100 to \$600 per instance when bus vendors fail to maintain bus routes, include all riders, communicate with DOE, or fail to provide service in other ways.⁵⁷ In years prior to the 2019-20 school year, OPT would give bus companies a “grace period” in September for the first two weeks of the school year without levying these liquidated damages.⁵⁸

⁵⁴ Communication on file with Council.

⁵⁵ OPT September 2022 testimony.

⁵⁶ Careers Portal, New York City School Bus Umbrella Services, available at <<https://www.nycsbus.com/careers-1>> (accessed November 16, 2022)(on file with Council).

⁵⁷ Report of the Human Services Division, filed by the Committee on Education, New York City Council (October 16, 2018), available at <<https://legistar.council.nyc.gov/View.ashx?M=F&ID=6682087&GUID=8232243C-42E6-4B1F-A0CE-AE6AD23136D3>>.

⁵⁸ Special Commissioner of Investigation for the New York City School District “Report regarding the Transportation of Students with Special Needs Aboard Dangerously Hot School Buses,” (December 4, 2019), available at <<https://nycsci.org/wp-content/uploads/2018/Reports/12-19-Hot-School-Buses-Report.pdf>>.

OPT testified at the September 2022 hearing that the September “grace period” remains a thing of the past—OPT now penalizes erring bus companies in the first two weeks of the school year just as it would at any other time during the school year.⁵⁹

The 2019 SCI investigation into broken air conditioning on school buses revealed some stark general findings about OPT’s issuing of violations and collection of liquidated damages. OPT told SCI that the office used about 60 different software applications and programs.⁶⁰ Among the systems that “don’t speak to each other” were OPT’s system for tracking complaints and its system for tracking violations, making it impossible to determine whether a given complaint led to a violation—ultimately costing the bus company.⁶¹ SCI recommended escalating penalties for repeat-violators,⁶² but it is not clear whether OPT has the ability to implement such a tiered system under its existing bus contracts. SCI opined that OPT’s “complaints process and violations processed must be merged” or “a lack of accountability” would continue.⁶³ OPT testified in the September 2022 hearing that the agency was “modernizing our legacy applications,” but did not specify whether that included the complaints and violations systems.⁶⁴

ii. Terminating Bus Contracts or Acquiring Bus Companies

OPT testified before the Education Committee in September 2022 that the agency had begun the process of terminating a habitually poor performing bus company, but could not divulge which one for legal reasons. The head of OPT said, “My office—and I have a great team working for me—is leaning into this,” referring to the termination of poorly performing bus companies’

⁵⁹ OPT September 2022 testimony.

⁶⁰ Special Commissioner of Investigation for the New York City School District “Report regarding the Transportation of Students with Special Needs Aboard Dangerously Hot School Buses,” at 12.

⁶¹ *Id.*

⁶² *Id.*, at 14.

⁶³ *Id.*

⁶⁴ OPT September 2022 testimony.

contracts.⁶⁵

In late 2020, DOE experimented with a more drastic approach—the acquisition of one of its troubled bus companies, Reliant Transportation, Inc., through a City-controlled nonprofit.⁶⁶ New York City School Bus Umbrella Services (“NYCSBUS,” pronounced “nice bus”) formed in September 2020.⁶⁷ The Chancellor and the Director of Management and Budget sit *ex officio* on the NYCSBUS board, and the Chancellor appoints the other three board members.⁶⁸ NYCSBUS acquired approximately 1,000 buses in its takeover of Reliant.⁶⁹ In December 2020, the Panel for Education Policy approved a contract with NYCSBUS at approximately \$890 million to operate approximately 835 routes from January 2021 to June 2026.⁷⁰

IV. CHALLENGES LOOM

i. DOE’s Student Transportation Modernization Plan is Delayed

DOE’S Student Transportation Modernization Plan began in 2019, in response to the Council’s STOP package and the implementing Chancellor’s Regulation A-802. DOE describes a phased approach that will eventually allow OPT to track every bus, every driver, and every student in real time.⁷¹ Each school will be able to track drivers on that school’s routes.⁷² Families will be

⁶⁵ OPT September 2022 testimony.

⁶⁶ Office of the Mayor, “Mayor de Blasio Announces Long-Term Investment in Bus Transportation for City Students,” (October 13, 2020), *available at* <<https://www.nyc.gov/office-of-the-mayor/news/710-20/mayor-de-blasio-long-term-investment-bus-transportation-city-students>>.

⁶⁷ NY Department of State listing for NYCSBUS, attached to NYCSBUS contract on file with Council (as released to a public Freedom of Information Law requester by the Office of the New York City Comptroller on September 1, 2022).

⁶⁸ By-laws of New York City School Bus Umbrella Services, Inc., *available at* <<https://www.nycsbus.com/by-laws>> (on file with Council).

⁶⁹ Office of the New York City Mayor, Press Release “[Mayor de Blasio Announces Long-Term Investment in Bus Transportation for City Students | City of New York \(nyc.gov\)](https://www.nyc.gov/office-of-the-mayor/news/710-20/mayor-de-blasio-long-term-investment-bus-transportation-city-students)” (October 13, 2020).

⁷⁰ NYCSBUS contract on file with Council (as released to a public Freedom of Information Law requester by the Office of the New York City Comptroller on September 1, 2022).

⁷¹ OPT website, [NYC Student Transportation Modernization Plan](#) > History (accessed November 17, 2022).

⁷² *Id.*

able to track their student on their bus in real time using the NYC School Bus App (a web version also exists).⁷³ This vision for the final phase of the Modernization Plan may decrease delays and will mitigate their impact on families by providing up-to-the-minute information. DOE’s legal deadline to provide real-time GPS data on students’ bus rides to their parents and guardians was September 2019, but that mandate still has not been met.⁷⁴

The history of DOE’s attempts to track its buses is long and troubled.⁷⁵ DOE first considered tracking its buses in 2005 as a way to pursue Medicaid reimbursement and contracted with Navman Wireless in 2013.⁷⁶ From 2015 to 2019, DOE paid Navman Wireless \$8.6 million for limited results—as SCI summarized, “[p]ut plainly, if OPT spent the above-cited \$8.6 million on devices in which, at best, one quarter of drivers were logged in, and, of those, only half subscribe to a route, then only \$1.065 million was even being used purposefully, with the remaining \$7.535 million a total waste.”⁷⁷ At the end of 2019, the Navman contract ended, and DOE began working with Via, Inc. According to DOE, by the end of 2019 GPS hardware had been installed on 10,000 buses.⁷⁸ The new contractor, Via, began work on the Driver App and the student- and family-facing NYC School Bus App between September 2019 and February 2020.⁷⁹ According to DOE, the agency “paused the project in 2020 due to the impact of the COVID-19 pandemic, but it recommenced in the 2020-21 school year by kicking off with small-scale testing

⁷³ *Id.*

⁷⁴ Section (d) of Local Law 32 of 2019.

⁷⁵ Special Commissioner of Investigation for the New York City School District, “Taken for a Ride: An Examination of the DOE’s Office of Pupil Transportation Contract for Medicaid Reimbursement for Transportation,” (September 2019), available at < [*9-19-OPT-Ltr-1.pdf \(nycsci.org\)](https://www.nycsci.org/wp-content/uploads/2019/09/9-19-OPT-Ltr-1.pdf) >.

⁷⁶ *Id.*, at Appendix C, “Timeline.”

⁷⁷ *Id.*, at 20-21.

⁷⁸ OPT website, [NYC Student Transportation Modernization Plan](#) > History (accessed November 10, 2022).

⁷⁹ *Id.*

of systems to ensure that each component was successful before expanding.”⁸⁰ That year, DOE began a pilot program with two of its bus companies to train their drivers on the Driver App.⁸¹ It is unclear why that six-month pause lasted as long as it did; with schools closed, and school buses not running, certain elements of the system obviously could not be tested under typical conditions, but certainly some sort of progress could still have been made during those months. As stated above, DOE’s provision of real-time tracking to students’ families remains more than two years overdue.⁸²

This year will be a crucial one for the Modernization Plan, as DOE asserts that “[a]ll schools in Community School District 26 will be participating in the VIA Pilot Rollout.”⁸³ However, that does not mean that every family in District 26 can avail themselves of the NYC School Bus App to track their student’s commute. According to DOE’s website, “[a]ll schools in Community School District 26 have access to the School Operating Console.”⁸⁴ In theory, that enables staff at each school to track each of the drivers—each signed into the Drivers App—on that school’s routes. DOE states vaguely that “[o]ver the course of the 2022-23 school year, the NYC School Bus App will be released to a subset of families,”⁸⁵ but has not publicly set a target date when all families in District 26 will have access or when all families citywide will be able to use the app.

ii. Electrification by 2035

By September 1, 2035, all buses used to transport New York City students must be zero-

⁸⁰ OPT website, [NYC Student Transportation Modernization Plan](#) > History (accessed November 10, 2022).

⁸¹ *Id.*

⁸² Section (d) of Local Law 32 of 2019.

⁸³ OPT website, [NYC Student Transportation Modernization Plan](#) > “What Will Happen During the 2022-23 School Year?” (accessed November 17, 2022).

⁸⁴ *Id.*

⁸⁵ *Id.*

emissions electric buses.⁸⁶ The law requires three progress reports on the way to that goal. First, by the end of the 2023 fiscal year, DOE must include a specific plan to achieve 75 electric buses by the end of Fiscal Year 2028. In its second report, by the end of FY 2028, DOE must describe its progress toward 100 percent of NYCSBUS buses, and 20 percent of all buses, being electric by 2030. Finally, by the end of Fiscal Year 2033, OPT must report whether 66 percent of all buses are electric.

On November 1, 2022, Mayor Adams announced the receipt of \$18.5 million from the U.S. Environmental Protection Agency (EPA), to finance 51 electric buses for use in New York City.⁸⁷ It is not clear what entity will own those new buses: the EPA’s announcement listed J.P. Bus & Truck Repair Ltd. as the “Applicant Organization” for almost all of that money,⁸⁸ but the President of Bird Bus Sales, speaking alongside the Mayor and the EPA’s Regional Administrator on November 1, said, “We congratulate Consolidated Bus [an OPT contractor] for all the hard work that they do transporting our students in New York City, and we look forward to the leadership as they take the dive into electric buses.” According to the EPA’s announcement, this is the first round—\$1 billion allocated across the country—of a five-year, \$5 billion program.⁸⁹

In the meantime, several of OPT’s contractors, with their diesel bus fleets, continue to regularly violate city and state idling limits, according to the New York Attorney General’s Office (NY

⁸⁶ Local Law 120 of 2021.

⁸⁷ Office of the New York City Mayor, “Transcript: Mayor Eric Adams Announces More Than \$18 Million in Funding From EPA’s Clean School Bus Program for 51 new School Buses,” (November 1, 2022), *available at* <<https://www.nyc.gov/office-of-the-mayor/news/802-22/transcript-mayor-eric-adams-more-18-million-funding-epa-clean-school-bus>>.

⁸⁸ United States Environmental Protection Agency – Region 2, News Release “[EPA \\$18.5 Million Rebate Will Put Clean School Buses on the Streets of New York City | US EPA](#)” (November 1, 2022).

⁸⁹ *Id.*

AG)⁹⁰ (NY AG). In May 2019, the NY AG filed suit in state court in Brooklyn against Jofaz Transportation, Inc., 3rd Avenue Transit, Inc., and Y&M Transit Corp., Inc, three school bus companies owned by Joseph Fazzia and his family, which collectively operate 614 buses and three Brooklyn bus yards.⁹¹The suit alleges that the three companies—two of which had entered into a 2005 agreement with the NY AG related to idling violations—constantly violated New York state idling laws between 2019 and April 2022.⁹²

V. CONCLUSION

It is clear that student transportation remains a critical function of the DOE with many challenges, especially related to serving students with disabilities and students in temporary housing, that demand urgent attention and sustained progress. Today’s hearing will provide an opportunity for the Committees to examine OPT’s current operations and its progress in these important areas.

⁹⁰ Office of the New York Attorney General, Press Release “[Attorney General James Sues Bus Companies for Polluting in New York City Communities | New York State Attorney General \(ny.gov\)](#)” (May 12, 2022).

⁹¹ *Id.*

⁹² *Id.*